

NOT TO BE PUBLISHED IN THE MAINE REPORTER

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-86-18

BOARD OF OVERSEERS OF THE BAR

v.

NORMAN S. REEF

OPINION AND ORDER

This matter is before the court under M. Bar R. 7(e)(4) and 7(e)(6)(A) & (D), on an information filed by the Board of Overseers of the Bar against respondent Reef, an attorney licensed to practice in this state since 1960. The Board alleges that on June 19, 1985, Attorney Reef engaged in conduct unworthy of an attorney and seeks his suspension from the practice of law in the State of Maine.

PROCEDURAL BACKGROUND

By letter of July 3, 1985, Denise Troiano complained to the Board of Overseers of the Bar about the conduct of Attorney Reef in contacting her by telephone on June 19, 1985. Attorney Reef responded to the complaint in two letters, dated July 3 and July 30, 1985. A confidential hearing was held by the Grievance Commission on June 12, 1986, under M. Bar R. 7(e).¹ The Grievance Commission determined that there was probable cause to file an

¹ Under M. Bar R. 7(b)(2) a panel of two attorney members and one lay member was designated to sit and act on behalf of the Grievance Commission, conducting the hearing and filing the information.

information pursuant to M. Bar R. 7(e)(6), and the filing of the within information followed.

The court held a de novo hearing on the information under M. Bar R. 7(e)(6)(D) on March 6, 1987. The Board of Overseers and Attorney Reef were both represented by counsel. At the request of both parties, the court reviewed the transcript of the hearing before the Grievance Commission.

FACTUAL BACKGROUND

Attorney Reef represented Joseph Troiano in a divorce action, and later, in post judgment motions before the District Court. Subsequent to the divorce, both Joseph Troiano and his first wife, Susan B. Winslow, remarried, Joseph Troiano to Denise Troiano, the complainant in this case. In the post divorce proceedings, both Susan Winslow and Mr. Troiano moved to change custody of the children from shared parental responsibility or joint custody to one of primary custodial care in the moving party. Pending hearing on those motions Mr. Troiano gave assurances to Attorney Reef that the children wanted to be with him, and that a court appointed guardian ad litem representing the interests of the children and a psychologist who had interviewed both parents and the children would both recommend that Mr. Troiano be awarded sole custody. Attorney Reef relied on, and did little or no independent investigating to verify, those representations. Unknown to Attorney Reef, the Troiano children were expressing preference to be with their mother, and both the psychologist and the guardian ad litem were intending to recommend that Ms. Winslow

be awarded sole custody. Attorney Reef also did not know that Denise Troiano opposed Mr. Troiano's efforts to gain sole custody of his children. Denise Troiano knew that the Troiano children wanted to be with their mother, believed that young children should not be separated from their mother, and, having raised her own children without aid from her first husband, did not want the responsibility of raising Mr. Troiano's children.

On June 18, 1985, Denise Troiano was served a subpoena on behalf of Susan Winslow requiring her to appear and testify at the June 19 post divorce hearing. Knowing that if required to testify she would have to oppose her husband's being granted sole custody, and that her position in this regard jeopardized her marriage to Mr. Troiano, Denise Troiano became very upset and a dispute with Mr. Troiano followed. Mr. Troiano was unsuccessful in persuading her to support his motion for sole custody.

On the morning of June 19, 1985, the day of the scheduled hearing, Mr. Troiano went to Attorney Reef's office and told him of the subpoena being served on Denise Troiano by Susan Winslow, and of Denise's opposition to Mr. Troiano's efforts to secure sole custody. Attorney Reef was shocked to learn of this potential testimony devastating to his client's cause. In the presence of Mr. Troiano Attorney Reef called Denise Troiano at her home, asked her what her testimony would be, and was told by an emotionally distraught Denise that she was prepared to testify in opposition to her husband's cause. She discussed with Attorney Reef her reasons for that position. Attorney Reef's efforts to persuade

her to change that position were unavailing. After a few minutes, Denise Troiano ended the conversation. Attorney Reef then advised Mr. Troiano to attempt to change his wife's mind before the hearing.

At that same morning meeting between Mr. Troiano and Attorney Reef, Mr. Troiano related that he had information about a co-worker of Susan Winslow's second husband at the Black Point Inn in Scarborough who had heard Mr. Winslow talk in derogatory fashion about the oldest Troiano daughter. Attorney Reef advised Mr. Troiano to try to contact that person and bring him to the hearing, scheduled for 1:30 that afternoon, or to have the guardian ad litem contact him. There was also some discussion of seeking a continuance of the hearing should that contact be unsuccessful.

Shortly before 1:00 p.m. on June 19, Attorney Reef telephoned Denise Troiano a second time. The nature and purpose of that brief phone call are very much in dispute.

Denise Troiano's version of the telephone call has been consistent, from her original written complaint to her testimony. According to her, Attorney Reef phoned her and told her that new evidence had been "admitted" in connection with the case and the case would probably be continued. He told her that she "should" stay home until she heard from him, according to Denise. She told Attorney Reef during the call that she would appear in court.

Attorney Reef denies telling Denise Troiano in the second phone call that she should stay home. Rather, he says, he called out of concern for her as his client's wife, who was very distraught and emotionally upset, because the custody dispute threatened to

jeopardize her recent marriage to Mr. Troiano. Attorney Reef asserts that his intent was to protect her from the trauma of unnecessarily appearing at a court hearing that he fully expected to be continued. Attorney Reef further explains that the Troiano home in South Portland was a short drive from the court hearing room in downtown Portland, and Denise could have appeared in court in plenty of time if the matter proceeded to hearing. Attorney Reef says that he told Denise she could stay home if she wished, and that she would be called if the hearing proceeded. He testified that he does not recall whether he mentioned that new evidence had been discovered.

The custody hearing was held as scheduled on the afternoon of June 19. Denise Troiano appeared at the hearing room in compliance with the subpoena. The Black Point Inn witness did not appear, nor was he contacted by either Mr. Troiano or the guardian ad litem. Neither party requested a continuance. At the hearing, the guardian ad litem recommended that custody of the Troiano children be awarded to their mother, Susan Winslow. After that testimony, a chambers conference occurred. Mr. Troiano withdrew his motion for custody, the hearing proceeded on an uncontested basis, and the court awarded Susan Winslow sole custody of the children.

FINDINGS AND CONCLUSIONS

The court concludes that the second phone call to Denise Troiano was an attempt to assure her absence from the custody hearing on June 19, 1985. The court finds that Attorney Reef,

knowing Denise had been subpoenaed by his adversary, told her that the discovery of new evidence would most likely result in the matter being continued, and that she should remain at home until contacted by him. At the time the call was made, based on the information given him by his client, Attorney Reef believed that his client's case for sole custody was very strong but for the testimony of Denise, the only evidence of which Attorney Reef was aware at that time which could seriously damage that case.

Having been convinced of these facts by a preponderance of the evidence the court concludes that Attorney Reef's conduct constitutes a violation of M. Bar R. 3.2(f)(3)² in that he engaged in conduct involving deceit and misrepresentation, and a violation of Rule 3.2(f)(4)³ in that the conduct was prejudicial to the administration of justice.

Although the purpose of proceedings under the Maine Bar Rules is "not punishment, but protection of the public and the courts from attorneys who by their conduct have demonstrated

² M. Bar R. 3.2(f)(3) provides:

3.2 Admission, Disclosure and Misconduct

(f) Other Misconduct. A lawyer shall not:

(3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation

³ M. Bar R. 3.2(f)(4) provides:

3.2 Admission, Disclosure and Misconduct

(f) Other Misconduct. A lawyer shall not:

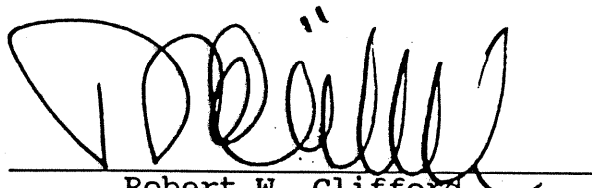
(4) engage in conduct that is prejudicial to the administration of justice.

that they are unable, or likely to be unable, to discharge properly their professional duties," M. Bar R. 2(a), the sanction of suspension is appropriate in this case which involves an attempt to affect the testimony of a potential witness in a judicial proceeding. In addition, this court has to take into consideration the two prior private reprimands that have been issued to Attorney Reef.

It is therefore ORDERED that respondent Norman Reef is hereby suspended as an attorney and counselor at law in all courts of this state for a period of thirty (30) days. This suspension shall be effective July 1, 1987, unless sooner stayed pursuant to Rule 7(e)(6)(G) of the Maine Bar Rules.

It is further ORDERED that on or before the effective date of the suspension, respondent or his counsel shall report to the court the action taken by him to comply with Rule 7(n) of the Maine Bar Rules.

Dated: May 19, 1987



Robert W. Clifford
Justice, Supreme Judicial Court